

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1427 – SB 2576

March 2, 2016

SUMMARY OF ORIGINAL BILL: Requires a law enforcement officer to run, at the time of arrest or as soon as possible thereafter, a criminal history background check on the person being arrested using the National Crime Information Center (NCIC), which is run by the Federal Bureau of Investigation (FBI). A copy of the criminal history must be attached to the original warrant and becomes a part of the person's law enforcement record until the disposal of the matter.

The background check must be run and attached to the warrant for all misdemeanors, felonies, summonses issued in lieu of arrest, citations issued in lieu of continued custody, and warrantless arrests.

Requires a court to consider the use of special conditions for any person charged with vehicular assault, vehicular homicide by intoxication, or driving under the influence (DUI); rather than for any person charged with vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI who had a prior conviction for vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI.

Requires a court to impose a special bond condition for any person who is charged with vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI and who has a prior conviction for vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI.

Establishes a procedure for revoking a person's bond. Requires a hearing to be conducted before bond can be revoked.

FISCAL IMPACT OF ORIGINAL BILL:

Increase Local Expenditures – Exceeds \$6,000/Incarceration*
Exceeds \$124,900*

Other Fiscal Impact – Requiring an NCIC background check to be attached to a warrant could be considered dissemination by the FBI. If the FBI considers the practice dissemination, then the FBI could pull Tennessee's access to NCIC. The impact of losing NCIC access would be significant. However, the impact cannot be reasonably determined because of multiple, unknown variables.

SUMMARY OF AMENDMENT (013099): Deletes all language after the enacting clause.

Requires a law enforcement officer, after arresting a person for vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI, but prior to the determination of bail, to exercise due diligence to determine whether the person has any prior arrests for vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI.

Requires a court to consider the use of special conditions for any person charged with vehicular assault, vehicular homicide by intoxication, or driving under the influence (DUI); rather than for any person charged with vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI who had a prior conviction for vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI.

Requires a court to impose a special bond condition for any person who is charged with vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI and who has a prior conviction for vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI.

For any person required to be monitored as a condition of bail, requires a bonding company or bonding agent, the judge or magistrate, the Department of Correction, or any other agency, department, program, group, private entity, or association that is responsible for the supervision of the defendant, to require periodic reporting by the defendant for verification of the proper operation of the monitoring device, require the defendant to have the device monitored for proper use and accuracy by an entity approved by the supervising entity at least every 30 days, and to notify the court of any of the defendant's violations for purposes of bond revocation.

Establishes a procedure for revoking a person's bond. Requires a hearing to be conducted before bond can be revoked.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

**Increase Local Expenditures – Exceeds \$6,000/Incarceration*
Exceeds \$124,900***

Assumptions for the bill as amended:

Assumptions Relative to Special Bond Conditions

- Courts currently consider using special bond conditions when a person is charged with vehicular assault, vehicular homicide by intoxication, or DUI and the person has one or more prior convictions for vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI.
- The bill as amended requires a court to impose, rather than consider, a special bond condition in the same scenario, and to consider using special bond conditions when a person is charged with vehicular assault, vehicular homicide by intoxication, aggravated

vehicular homicide, or DUI even if the person does not have a prior conviction for vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI.

- The special conditions to be imposed include, but are not limited to:
 - ignition interlock devices;
 - transdermal monitoring devices or other alternative alcohol monitoring devices;
 - electronic monitoring with random alcohol or drug testing; and
 - pretrial residency in an in-patient alcohol or drug rehabilitation center.
- The bill as amended will increase local expenditures (1) for the special conditions required under the bill as amended that an indigent person will not be able to pay for; and (2) for increased time served pretrial after a person's bond is revoked because of a violation of the special condition.
- The bill as amended will result in more defendants having special bond conditions imposed upon them. If they violate a special bond condition, their bond may be revoked after a hearing and they will be remanded to jail awaiting trial.
- The estimated 2016 cost per inmate per day for local jails is \$60.00.
- Fiscal Review cannot reasonably determine how many defendants will violate their special bond conditions. However, Fiscal Review can reasonably assume that the additional time served by the affected defendants will total no less than 100 days.
- The increase in local incarceration costs is assumed to exceed \$6,000 (100 days x \$60.00 per day).
- Statistics from the Department of Correction (DOC) show an annual average of admissions over the last 10 years for vehicular assault, vehicular homicide by intoxication, and aggravated vehicular homicide as follows:
 - Vehicular assault – 34.8 admissions per year;
 - Vehicular homicide by intoxication – 34.7 admissions per year; and
 - Aggravated vehicular homicide – 6.2 admissions per year.
- It is assumed that 10 percent of these admissions are second offenses $[(34.8 + 34.7 + 6.2) \times 0.10 = 7.57 \text{ admissions}]$.
- Statistics from the Department of Safety (Safety) show an average of 2,571.4 convictions each year over the past five years for second offense DUI.
- The bill as amended will result in 2,579 defendants $(2,571.4 + 7.6)$ each year having mandatory special bond conditions imposed. It is assumed that a court already imposes special bond conditions upon one-third $(2,579 \times 0.33 = 851.1)$ of these defendants.
- A court can require a defendant to pay for the costs of the special bond condition, but a defendant can also declare indigence. If a court finds the defendant is indigent, then the special bond condition would be provided by the local government. Transdermal monitoring, however, would not be provided by a local government because there is a specific statutory provision requiring the defendant to pay the costs and does not include a provision allowing for a finding of indigence. It is assumed that one-half of the 1,728 defendants $(2,579 - 851)$ affected by the bill as amended are indigent $(1,728 \times 0.5 = 864)$. It is assumed that no court will impose transdermal monitoring upon an indigent defendant, as that defendant would have to remain in local custody until trial.
- Fiscal Review cannot reasonably determine what special bond conditions the courts will impose upon the 864 indigent defendants not currently subject to special bond

conditions. However, Fiscal Review can reasonably assume that each special bond condition listed above will be imposed upon no less than 20 indigent defendants.

- Rates for ignition interlock devices vary by provider, but the Department of Safety sets maximum rates that may be charged. The maximum rates are \$150 for installation, \$100 for monthly monitoring, and \$75 for removal. It is assumed that the cost to install, monitor, and remove an ignition interlock as a special bond condition will be the same as the rates set by Safety.
- It is assumed that the average time between a defendant's bond hearing and trial is one month.
- The time between a bond hearing and trial for vehicular assault, vehicular homicide by intoxication, and aggravated vehicular homicide could be one year or more, but the time between a bond hearing and trial, if any, for a second offense DUI is shorter. Given the number of second offense DUI convictions (2,571) versus the number of admissions for second offense vehicular assault, vehicular homicide by intoxication, and aggravated vehicular homicide (8), it is assumed that the average time is one month.
- It is assumed that the increase in local expenditures for ignition interlock devices for special bond conditions will exceed \$6,500 {20 defendants x [\$150 installation + (\$100 monthly monitoring x one month) + \$75 removal]}.
- Research shows that the average cost for GPS monitoring of a defendant is approximately \$36 per day. It is assumed that the rate for electronic monitoring of a defendant is the same. Further, the Department of Mental Health and Substance Abuse Services (Mental Health) reports their average cost for an alcohol or drug test is \$15 per test. Mental Health notes that their rate is likely lower than the average cost for a drug test. It is assumed that the average cost for a drug test is \$20.
- It is assumed that a defendant will be drug or alcohol tested at least twice during the one-month bond period. It is assumed that the recurring increase in local expenditures for electronic monitoring will exceed \$22,400 {20 defendants x [(\$36 per day monitoring x 30 days) + (\$20 per drug test x 2 tests)]}.
- Mental Health reports that the cost for in-patient treatment per day is \$160. It is assumed that the same rates will apply for in-patient alcohol or drug rehabilitation imposed as a special bond condition.
- It is assumed that the increase in local expenditures for in-patient alcohol or drug rehabilitation will exceed \$96,000 [20 defendants x (\$160 per day x 30 days)].
- It is assumed that the total recurring increase in local expenditures will exceed \$124,900 (\$6,500 + \$22,400 + \$96,000).

Assumptions Relative to Due Diligence of the Arresting Officer

- The bill as amended requires law enforcement officers to exercise due diligence in determining whether the defendant has any prior convictions for vehicular assault, vehicular homicide by intoxication, or DUI, when the person is arrested for a violation of vehicular assault, vehicular homicide by intoxication, or DUI.
- It is assumed that law enforcement agencies can exercise due diligence within their existing resources.

Assumptions Relative to Bond Revocation

- The bill as amended establishes a procedure for bond revocations, including, among other requirements, a hearing and a finding by the court.
- According to the Administrative Office of the Courts, courts currently hold hearings for bond revocations though there is not statutory requirement to conduct such a hearing.
- Any impact to the courts can be accommodated within existing resources.
- The District Attorneys General Conference and the District Public Defenders Conference report that they can handle any impact within their existing resources.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

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